IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 26953 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEMLATABEN HARISHBHAI PATEL. AND ORS.
Versus
HARISHBHAI MANCHHUBHAI PATEL. AND ORS.

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Appearance :

MR AMIT V THAKKAR for Petitioners:1-3

MR JOSHI for Respondent:4

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 21/08/2007

ORAL JUDGMENT

1. Rule. Shri Joshi, learned counsel waives service of notice of Rule on behalf of respondent no.4.

2. The present petition has been preferred against the order dated 21st September, 2006 below Exh.38 passed by the learned 8TH Additional Senior Civil Judge, Surat in Regular Civil Suit No.75 of 2004 whereby an application preferred by the original plaintiffs for joining purchaser of the ancestral property was not allowed by the Trial Court against which the present petition has been preferred.

3. Having heard the learned counsel for the petitioner as well as for respondent no.4 and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by the Trial Court dated 21st September, 2006 below Exh.38 in Regular Civil Suit No.75 of 2004 mainly for the following facts and reasons:-

3.1 It appears, from the facts of the case, that the petitioners are the original plaintiffs who preferred Regular Civil Suit No.75 of 2004 for partition of the ancestral property. The impugned property i.e. Final Plot No.5/D, has been purchased

from original defendant no.1 by the proposed defendant i.e. present respondent no.4. The property is an ancestral property, as per the order passed by Trial Court as per Para:5 of an impugned order. The original plaintiffs are claiming partition of the said property along with other properties. The present respondent no.4 has purchased the property from original defendant no.1 on 9th August, 2002. This fact was not known to the original plaintiffs and, therefore, suit was instituted in the year 2004 without joining respondent no.4 as a party-original defendants. Therefore, an application below Exh.38 was given, no sooner did, original plaintiff came to know that one of the ancestral properties was sold away by original defendant no.1 to the present respondent no.4.

3.2 It also appears from the facts of the case that original plaintiffs have given public notice in the year 2000 as well as in the year 2004 about their rights in the ancestral property. Despite this, it is the respondent no.4 who has purchased the property from the original defendant no.1.

3.3 It is also submitted by the learned counsel appearing for the original plaintiff that an application was preferred on 14th July, 2004, below Exh.28, whereby the defendants were called upon to inform the original plaintiffs that which ancestral properties have been sold away to whom. No such detail was given by the original defendant no.1, and, therefore, some time has been consumed after instituting the suit bearing No.75 of 2004 in finding out the fact that who is the purchaser of the ancestral properties, and, therefore, when the original plaintiffs came to know that the present respondent no.4 has purchased ancestral properties in which the original plaintiffs have got right, title and interest, an application below Exh.38 was given for joining respondent no.4 as party defendant. This aspect of the matter has not been property appreciated by the Trial Court.

3.4 It has been stated in the impugned order that the original plaintiffs could have joined the respondent no.4 as a party defendant when the suit was instituted but as they have not done this

(joined the respondent no.4 as a party defendant), an application below Exh.38 could not be allowed. This reasoning is erroneous reasoning and against the law. Multifariousness of proceeding ought to be avoided.

3.5 When the original plaintiffs are in search of partition of the property, when the original plaintiffs are giving application to the Court that which of the ancestral properties have been sold away, in such a situation in finding out the correct facts, some time has been consumed by the original plaintiffs and ultimately when they came to know that the respondent no.4 has purchased one of the ancestral properties on 9th August, 2002 and therefore, correctly an application below Exh.38 was preferred by the original plaintiffs that such a purchaser i.e. respondent no.4 ought to have been joined as one of the defendants. It is also stated by the Trial Court that property is ancestral property. In this set of circumstances grave error has been committed by Trial Court in not joining the present respondent no.4 as one of the defendants.

4. As a cumulative effect of the aforesaid facts and reasons, the order 21st September, 2006, passed by the Trial Court, below Exh.38, in Regular Civil Suit No.75 of 2004 is hereby quashed and set aside. The present respondent no.4 is joined as party defendant.

5. Rule is made absolute. Direct Service is permitted.

(***D.N.PATEL, J.***)

Amit/-